

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

NGM INSURANCE COMPANY f/k/a
NATIONAL GRANGE MUTUAL INSURANCE COMPANY.
a Florida corporation,

Plaintiff,

v.

Civil Action No.: 3:07CV536

SECURED TITLE & ABSTRACT, INC.,
a Virginia Corporation, *et als.*,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR WITHDRAWAL OF COUNSEL

Charles W. Hundley, Jonathan B. Macdonald, and the law firm of Cherry, Seymour & Hundley, PC ("Counsel"), counsel of record for defendants, crossclaim defendants and third-party plaintiffs Secured Title & Abstract, Inc. ("Secured Title"), Larry T. Davis ("Larry Davis") and Janelle M. Davis ("Janelle Davis"), for their Memorandum of Law in Support of Motion for Withdrawal of Counsel, state as follows:

STATEMENT OF RELEVANT FACTS

1. Defendants, crossclaim defendants and third-party plaintiffs Secured Title, Larry Davis and Janelle Davis retained Counsel to represent them in the above matter on February 26, 2007, pursuant to a written Agreement for Legal Services.

2. Secured Title, Larry Davis and Janelle Davis have not fulfilled the obligations of their Agreement for Legal Services. Counsel has made repeated, unsuccessful efforts to resolve this matter with Secured Title, Larry Davis and Janelle

Davis. Counsel and the former clients, Secured Title, Larry Davis and Janelle Davis, have mutually terminated their relationship.

3. Counsel provided notice of its Motion for Withdrawal of Counsel and related hearing to former clients and to other parties, and Secured Title, Larry T. Davis and Janelle M. Davis have endorsed the related draft Order approving the withdrawal and are seeking new counsel.

4. It will operate as a hardship on Counsel to continue the responsibilities and obligations associated with the representation of Secured Title, Larry Davis and Janelle Davis.

ARGUMENT AND AUTHORITY

5. Rule 1.5 of the Rules of the Supreme Court of Virginia provides in pertinent part as follows:

“Counsel of record” includes a counsel or party who has signed a pleading in the case or who has notified the other parties and the clerk in writing that he appears in the case. Counsel of record shall not withdraw from a case except by leave of court after notice to the client of the time and place of a motion for leave to withdraw.

6. Similarly, Rule 1:6 of the Virginia Rules of Professional Conduct, concerning Declining or Terminating Representation, provides in pertinent part as follows:

- a. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (3) the lawyer is discharged.
- b. Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

- (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (6) other good cause for withdrawal exists.
- c. In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

7. Counsel meets the requirements of and is complying with said Rule 1:5 and said Rule 1:16 through its motion, notice and hearing in order to withdraw as counsel of record.

8. Counsel and its former clients have mutually terminated their relationship, and the former clients have endorsed the draft Order for withdrawal and are seeking new counsel.

9. Secured Title, and its owners and officers Larry and Janelle Davis, are aware that while Larry and Janelle Davis could choose to represent themselves "*Pro Se*", Virginia Unauthorized Practice of Law Rule 1-101 and related Consideration 1-3 do not allow them or any non-lawyer to represent Secured Title before a tribunal in Virginia, so that Secured Title will need a lawyer with respect to matters involving legal conclusions, examinations of witnesses or preparations of briefs or pleadings.

10. Withdrawal of counsel is essentially a matter between the client and counsel, which may be a consideration for the court but is not a proper concern for other

parties. While there are several annotations to the said Rule 1.5 and said Rule 1.16, as well as commentary and cases in various treatises such as Michie's Jurisprudence (e.g., 2A Michie's Jurisprudence, Attorney and Client § 16), these comments and cases concern situations where the client objects to the withdrawal and the circumstances are extreme (such as in the middle of trial). Counsel is not aware of any case in Virginia, or elsewhere, where withdrawal was not allowed where the rules were complied with and the client did not object to or oppose the withdrawal.

11. Counsel has also represented Secured Title, and Larry and Janelle Davis in two other related state court actions (*Secured Title v. Marathon Bank*, Circuit Court of Frederick County, Case No. CL07-293, and *First American Title v. Secured Title, et als.*, Circuit Court of Frederick County, Case No. CL07-311) and also filed Motions for Withdrawal of Counsel in such actions, and pursuant to a hearing on such motions held on March 20, 2008, the trial judge granted the withdrawal by Counsel in such actions.

CONCLUSION

12. Based on the foregoing, Charles W. Hundley, Jonathan B. Macdonald and Cherry, Seymour & Hundley, PC respectfully request that they be given leave of this Court to withdraw from representing Secured Title, Larry Davis and Janelle Davis in the above styled matter, and that an Order be entered as drafted and provided by said Counsel and endorsed by Secured Title, Larry Davis and Janelle Davis.

CHARLES W. HUNDLEY,
JONATHAN B. MACDONALD, AND
CHERRY, SEYMOUR & HUNDLEY, P.C.

By: /S/
Of Counsel

Jonathan B. Macdonald (VSB # 20747)

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*Counsel for defendants, crossclaim defendants and
Third-party plaintiffs Secured Title & Abstract, Inc.,
Larry Davis and Janelle Davis*

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following counsel of record:

Blackwell N. Shelley, Jr.
Tim Schulte
Shelley & Schulte, PC
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*Counsel for Defendant and Crossclaim Plaintiff
David R. Licklider*

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*Counsel for Third-Party Defendant
United Bank*

And I hereby certify that I will mail the document by U.S. mail to the following non-filing users:

Richard G. Nord
10625 Jones Street
Fairfax, Virginia 22030-5116

Wells Fargo Bank, N.A.
Corporation Service Company, Registered Agent
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Appalachian Title
Frank Treutlein, Owner
316 Warren Avenue, #8
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Sonya Vasileva
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Kiril Vasileva
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Christopher P. Kees
2922 Sorrell Court
Winchester, Virginia 22601

Tara R. Mellott
2922 Sorrell Court
Winchester, Virginia 22601

And I further certify that I will mail the documents by U.S. Mail to the following Parties:

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Route 1, Box 301
Highview, West Virginia 26808

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/S/

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